

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PENNY K. YOHE,

Plaintiff,

v.

Civil Action No. 5:09CV75
(STAMP)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE
AND DENYING MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

On July 7, 2009, the plaintiff brought the above-styled civil action. The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B).

At the same time she filed her complaint, the plaintiff also filed a motion for leave to proceed in forma pauperis. After reviewing the plaintiff's application, Magistrate Judge Seibert submitted a report and recommendation to this Court, recommending that the plaintiff's motion to proceed in forma pauperis be denied. The magistrate judge advised the plaintiff that the plaintiff may file written objections to his proposed findings and recommendations within ten days after being served with a copy of

the magistrate judge's recommendation. The plaintiff filed no such objections.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

The plaintiff's application to proceed in forma pauperis indicates that she receives a total monthly income of \$1,149.00. The plaintiff also states that she owns a 2005 Toyota Corolla with an estimated value of between \$8,225.00 and \$11,875.00. Based upon the figures provided in the plaintiff's application, the magistrate judge found that the plaintiff's monthly income exceeds her monthly expenses by \$598.00, and concluded that she can therefore afford the filing fee and still provide for her necessities. Accordingly, the magistrate judge recommended that the application to proceed in forma pauperis be denied.

Because the plaintiff has not objected to the report and recommendation of the magistrate judge, and because this Court

finds that the magistrate judge's recommendation is not clearly erroneous, the ruling of the magistrate judge is hereby AFFIRMED and ADOPTED in its entirety, and the plaintiff's motion for leave to proceed in forma pauperis is DENIED.

The Clerk is DIRECTED to transmit a copy of this order to the plaintiff.

IT IS SO ORDERED.

DATED: August 7, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE